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Taking COBRA or Exchange Coverage: Impact on the Health Care Reform Subsidy

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Earlier this month, health insurance exchanges (also known as marketplaces) under the Affordable Care Act were launched, giving consumers — including COBRA qualified beneficiaries — new coverage options. Because qualified beneficiaries may come to employers with questions about enrolling in COBRA versus exchange coverage, here are some key issues to keep in mind.

The key question is: When may an individual change from COBRA coverage to marketplace coverage, and how might the individual's eligibility for a subsidy (which will help defray the cost of marketplace coverage) be affected? In other words, once COBRA coverage is elected, may the individual drop COBRA at any time and enroll in subsidized coverage through a marketplace, or must the individual either exhaust COBRA or wait for a marketplace open enrollment period? The answer is not entirely clear.

In general, the marketplace will offer an open enrollment period each year that runs from Oct. 15 through Dec. 7 (the same period as the Medicare Part D open enrollment period). In the first year of operation, an extended open enrollment for marketplace coverage will be offered, which runs from Oct. 1, 2013, through March 31, 2014.

To avoid adverse selection in the marketplace, a consumer generally must experience a "special enrollment event" to enroll in a marketplace plan outside of an open enrollment period. Similar to the HIPAA special enrollment rules for employer-sponsored group health plans (although more permissive), the special enrollment rules for marketplace coverage include entry due to an individual:

1. losing other health coverage;
2. gaining a dependent (or becoming a dependent) through marriage, birth, adoption or placement for adoption;
3. newly gaining status as a citizen, national or lawfully present individual;
4. unintentionally or inadvertently failing to enroll due to an error on the part of the marketplace;
5. demonstrating to the marketplace that the plan in which the individual is enrolled substantially violated a material provision of its contract in relation to the enrollee (this would permit an individual to change marketplace plans);
6. being determined newly eligible (or experiencing a change in eligibility) for subsidized coverage (regardless of whether the individual is already enrolled in marketplace coverage);
7. changing residence such that the individual gains access to new marketplace options; or
8. demonstrating that the individual meets other exceptional circumstances as the marketplace may provide.

The special enrollment rules for marketplace coverage further provide that a loss of other health coverage includes exhaustion of COBRA coverage. However this does not include termination or loss of coverage due to failure to pay COBRA premiums on a timely basis. In other words, the marketplace appears to follow the same rules that apply to employer-sponsored group health plans in this regard: A voluntary cessation of COBRA coverage before the end of the maximum COBRA period does not create a special enrollment event. This appears to mean that individuals who choose to elect COBRA coverage must maintain that coverage at least until the next marketplace open enrollment period if they do not wish to experience a gap in coverage.

That said, an individual who voluntarily drops COBRA may be eligible to enroll in marketplace coverage under Rule 6 above, if cessation of COBRA coverage causes him or her to be newly eligible for a subsidy. Under the rules relating to the federal subsidies, an individual generally will not be eligible for a subsidy while enrolled in COBRA. However, the subsidy rules appear to provide that an individual only will be ineligible during those months in which he or she is actually enrolled in COBRA coverage.

Therefore, if failure to pay COBRA premiums on a timely basis results in eligibility for a subsidy (because the individual is no longer enrolled in an eligible employer-sponsored plan), the fact that the individual is eligible for a subsidy appears to permit him or her to enroll in marketplace coverage mid-year as the result of special enrollment event Rule 6 above. However, an individual who drops COBRA coverage mid-year, but who is not newly eligible for a federal subsidy as a result, appears to be ineligible to enroll in marketplace coverage outside of open enrollment.

Plan and COBRA administrators should keep such issues in mind and anticipate questions from qualified beneficiaries who are evaluating whether to elect COBRA coverage or marketplace coverage.